

EXHIBIT 1

Confidential
30(B)(6) NPBL by designee CANNON MOSS - February 14, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

CSX TRANSPORTATION, INC.,)	
Individually and on behalf)	
of NORFOLK & PORTSMOUTH)	
BELT LINE RAILROAD)	
COMPANY,)	
)	
Plaintiff,)	
)	
V.)	NO. 2:18cv530
)	
NORFOLK SOUTHERN RAILWAY)	
COMPANY, NORFOLK &)	
PORTSMOUTH BELT LINE)	
RAILROAD COMPANY, JERRY)	
HALL, THOMAS HURLBUT,)	
PHILIP MERILLI and CANNON)	
MOSS,)	
)	
Defendants.)	

C O N F I D E N T I A L

30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF
NPBL by its designee CANNON MOSS
TAKEN ON BEHALF OF THE PLAINTIFF
Norfolk, Virginia
February 14, 2020

1 We have a union work force, so they
2 are -- they don't have a set 40-hour week working nine
3 to five.

4 Q But they are -- they may be unionized,
5 but they are still the Belt Line's employees; correct?

6 A Correct.

7 Q In other words, you are not bringing in
8 people from Local 489 --

9 A No.

10 Q -- but they are on a 1099 or similar
11 basis, okay.

12 And so what is the business of the
13 Belt Line?

14 A Our business is to be the first and last
15 mile in this area, meaning we get traffic from
16 Norfolk Southern and CSX and we provide switching
17 services to the 26 customers that we have up and down
18 the line.

19 Q You said 26 customers.

20 Is that a number that is fixed by any
21 type of agreement, statute or regulation?

22 A No.

23 And we used to have significantly more,
24 but they built a highway system, so we lost a couple.

25 Q Would the Belt Line -- well, is it one of

1 Elizabeth River.

2 Q And are you providing services to the
3 Perdue facility?

4 A Yes.

5 Q Okay. On Belt Line tracks?

6 A Yes.

7 Q And is the fees for the services that the
8 Belt Line is providing to Perdue the same that is
9 charged for CSX for the services provided at NIT and
10 PMT?

11 A Our rate is a universal rate for all
12 traffic, both -- for either NS or CSX.

13 Q Right. But how about for Perdue?

14 A The rate is -- all of our customers pay
15 the same rate.

16 Q Okay.

17 (Train origin spreadsheet, NPBL004140-54
18 marked as NPBL Exhibit Number 11)

19 BY MR. McFARLAND:

20 Q Looking at what's been marked as
21 Belt Line deposition Exhibit 11, do you know what this
22 document is, Mr. Moss?

23 A Not really. I've never seen it before.

24 Q Okay. It was produced by the Belt Line
25 as part of their response to our Request for

1 A Again, I'm not sure. We were paying to
2 use that -- those diamonds, we were paying, you know, a
3 lot of money.

4 We don't have to pay that anymore. We
5 pay just a little bit of money. So those costs are
6 less.

7 Q Okay. So is that cost being passed on to
8 the customer?

9 A What, the savings?

10 Q Yes.

11 The decrease in cost. I'm sorry, I will
12 be a little more specific.

13 A Well, this was signed in 2008 and I know
14 we took a -- last time we changed the rate was in 2010
15 and that was a decrease, so maybe it had something to
16 do with this.

17 Q When you say "a decrease in rate," you
18 mean for which now?

19 A Our tariff rate.

20 Q That you charged everyone?

21 A Correct.

22 Q Okay. So if you are using Portlock as a
23 run-around, does that mean the train is over 73 feet?

24 A That means a car could be over 73 --

25 Q A car.

1 A I have seen one like it, yes.

2 Q Okay.

3 A I haven't seen this one.

4 Q And what do you understand it to be?

5 A It's our switching tariff.

6 Q And is this the switching tariff that was
7 in place effective May 1st of 2008?

8 A That's what it says on it, yes.

9 Q Okay. And if we go to page 5, item 125,
10 almost dead middle of the page, is line haul switching.
11 Do you see that?

12 A Correct, yup.

13 Q And am I correct that under the 2008
14 tariff, there was a -- almost about a hundred buck
15 difference on domestic versus import/export
16 commodities; right?

17 A Correct.

18 Q What I followed you to say is now we've
19 got a single charge of \$210?

20 A Correct.

21 Q Regardless of whether it's coming from
22 California or Illinois or Hong Kong or Paris --

23 A Sure.

24 Q -- am I correct?

25 A Yeah.

1 need to take a rate increase.

2 Q Sorry. Cash flow issue?

3 A Our cash flows issues that we're going to
4 experience here this year.

5 Q Meaning the cash flow, there is somewhat
6 of a crunch or --

7 A Yeah, meaning all the money we're
8 spending on the lawyers for this lawsuit.

9 Q And so what -- what does -- how does that
10 play into the rate, the tariff rate for line haul
11 switching, if at all?

12 A Well, if we don't have any cash, then we
13 can't pay the light bill, pay our people.

14 Q So is the -- have you made any type of
15 proposal to raise the line haul switching rate from
16 210?

17 A We will make that recommendation at the
18 next board meeting.

19 Q And when you say "we," you mean
20 management?

21 A Management.

22 Q Okay. Let's see. The next board meeting
23 is April?

24 A Correct.

25 Q Okay. Do you know the figure management

1 Q But is -- is the board looking at any
2 ways to increase the amount of traffic that you're
3 handling?

4 A I can't speak to what the -- the other
5 board members are doing.

6 Q Right.

7 But in terms of you are a board member,
8 and when the board meets, is there -- I mean, has there
9 been any discussion on the board of, "Hey, our income
10 has gone down a pretty fair amount in three years?
11 What are we going to do"?

12 A Well, the Belt Line is designed not to
13 really make a lot of revenue. We're designed to
14 basically cover our costs of capital.

15 Q Okay.

16 A So I -- I can't speak to the other board
17 members. But being a board member, if our rate has not
18 increased and we're still providing service and we're
19 investing back into the railroad, that is what we're
20 supposed to do.

21 Q But you've only got so much you can
22 invest back into the railroad as your income from
23 operations keeps going down; right?

24 A Correct.

25 Q I mean, one can invest more with an

1 A Yes.

2 Q And what was the result of the
3 Belt Line's analysis?

4 A We didn't think that the proposed rate
5 would make sense for us. I mean, it -- there were some
6 problems with the rate they proposed. We didn't know
7 what we were going to be paying Norfolk Southern for
8 trackage rates; we couldn't do an in-depth analysis.

9 The other aspect is if we gave a rate of
10 this magnitude to CSX, then our other largest customer
11 that handled 18,000 carloads would probably want the
12 same one, so we'd lose revenue from that aspect.

13 But that's why we proposed to the board
14 if they want to seriously look at it, to have a rate
15 committee to look at our rates.

16 Q Okay. So is the recommend- -- the
17 official recommendation from management to the board
18 was to have a rate committee look at this proposal?

19 A That's the message I relayed to the
20 board.

21 Q Okay. And what was the board's response
22 to that message?

23 A There was no interest from either side to
24 have a rate committee.

25 Q When you say "either side"...

1 Norfolk Southern about what rate they would charge.

2 Q Wasn't, under this proposal, CSX
3 guaranteeing a certain amount of volume at the \$80 per
4 car rate?

5 A Yes.

6 Q Okay. So did you use their -- I think
7 it's 18,000, minimum of 18,000 cars per year; right?

8 A Correct.

9 Q And did you use that figure in the, what
10 is it, \$80 per car?

11 A Correct.

12 Q Okay. In calculating revenue?

13 A Correct.

14 Q Am I right that that would be an increase
15 in revenue under that scenario?

16 A Again, with the unknowns that we had, it
17 would be hard to say.

18 Plus, just like our other customer that
19 has come to us with a cheaper -- asking for a cheaper
20 rate, if we had -- if we accepted this for CSX, then --
21 for our intermodal customer, then we had to accept it
22 for our grain customer and our overall revenue would
23 decrease.

24 Q Was an analysis done to determine that?
25 Actual numbers were run and analysis done?

1 A An analysis was to determine about the
2 \$80 rate up to NIT.

3 Q Okay.

4 A It didn't take a whole lot of analysis to
5 think about your other big customer and if you had to
6 knock off \$130 off their per car rate, how much you'd
7 lose.

8 Q Okay. But was -- my question is, was an
9 analysis undertaken? Are there figures somewhere, are
10 there worksheets or a report --

11 A That --

12 Q Let me finish the question, please.

13 A Sure.

14 Q -- that the Belt Line did on this
15 proposal?

16 A I believe there's a -- an analysis that
17 Miss Coleman has written out longhand on it.

18 Q Okay. If CSX was guaranteeing a minimum
19 of, I think it's 1800 cars under this -- under its
20 proposal; right?

21 A 18,000.

22 Q 18,000; I'm sorry.

23 -- 18,000 cars under this proposal, what
24 was the number of cars that the Belt Line moved for CSX
25 in 2017?

1 us to handle the business and then her analysis that
2 would show we would make a profit of \$892.

3 But there was a problem with her analysis
4 because the joint facilities incremental costs were
5 incorrect. She did on a -- she used the per car each
6 way of \$8.23 but she didn't include the fixed costs of
7 a hundred and something thousand dollars that we paid
8 them.

9 So if you add that up, we would have lost
10 money.

11 Q Okay. And I'm sorry, how many -- how
12 many -- what volume is she using for her analysis?

13 A It says down here 75 wells at \$80 equals
14 \$6,000 revenue per trip, followed by the costs,
15 followed by -- then you get the total of what each
16 train would net you.

17 Q Okay. Was there any analysis undertaken
18 to see, okay, if \$80 we think is too low of a rate
19 structure between 80 and 210 by the Belt Line
20 management?

21 A There was no analysis as to what the
22 magic number was.

23 Q So was the reason that was given by
24 management -- is it fair to say management then did not
25 support the CSX proposal?

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1 attorney, but -- so I can't speak to the reasoning
2 behind CSX sending these demand letters.

3 BY MR. WINGFIELD:

4 Q Did you feel like litigation was in the
5 air?

6 MR. McFARLAND: Same objection.

7 THE WITNESS: It seemed like it.

8 BY MR. WINGFIELD:

9 Q Let's go back to that which is marked as
10 NPBL 31 which is the March 23rd, 2018 CSX proposal.

11 Do you have that in front of you, sir?

12 A Yes.

13 Q Thank you.

14 So when you received this letter, you
15 clearly understood that CSX was seeking a private
16 contract with NPBL; right?

17 A Correct.

18 Q And in the world of railroad rates, there
19 are rates that are provided by tariff; correct?

20 A Correct.

21 Q And then there are rates that can be set
22 by private agreement between the railroad and a
23 shipper; right?

24 A Correct.

25 Q Okay. And so you understood in this